

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against the Defendant pursuant to Sections 113(b)(2) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92. Defendant modified, and thereafter operated, its electric generating units at Big Bend and Gannon, coal-fired electricity generating power plants in Hillsborough County, Florida, without first obtaining appropriate permits

authorizing this construction and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act requires.

2. As a result of Defendant's operation of the power plants, following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants. Defendant's violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing this Defendant, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electric power plants in the Midwest and Southern United States being filed by the United States concurrent with the filing of this complaint, will produce an immediate, dramatic improvement in the quality of air breathed by millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid precipitation, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into air can have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur dioxide ("SO<sub>2</sub>") interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the

inhalable particles and according to recent studies, higher levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen Oxides (“NO<sub>x</sub>”) are major producers of ground level ozone, which scientists have long recognized as being harmful to human health. NO<sub>x</sub>, transformed into ozone, may cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Human lungs may be inflamed and permanently damaged by ozone. NO<sub>x</sub> is also transformed into nitrogen dioxide (“NO<sub>2</sub>”), a dangerous pollutant which can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken one’s immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases are also predisposed to sensitivity to NO<sub>2</sub> exposure. NO<sub>x</sub> also reacts with other pollutants and sunlight to form photochemical smog, which in turn contributes to haze and reduces visibility.

5. SO<sub>2</sub> and NO<sub>x</sub> interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet, “acidifies” lakes and streams rendering them uninhabitable by aquatic life, and it damages trees at high elevations. Acid precipitation accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation’s

cultural heritage. SO<sub>2</sub> and NO<sub>x</sub> gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with it, the United States intends to reduce dramatically the amount of SO<sub>2</sub> and NO<sub>x</sub> that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is imposed, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO<sub>2</sub> and NO<sub>x</sub> will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micro-meters or less is referred to as PM-10. Power plants are a major source of particulate matter (“PM”). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM could also make the effects of acid precipitation worse, reducing visibility and damaging man-made materials. Reductions in PM illegally released into the atmosphere by the defendant and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

## JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) and (c), and 1395(a), because the Defendant resides in this District, the violations occurred in this District, and the Big Bend and Gannon facilities are located in this District.

## NOTICES

9. The United States is providing notice of the commencement of this action to the State of Florida as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

## THE DEFENDANT

10. Defendant, Tampa Electric Company (“TECO”), owns and is an operator of Big Bend coal fired electric generation plant in Hillsborough County. Big Bend generates electricity from four steam generating boilers which are designated as Big Bend Unit 1 (“Unit 1”), Big Bend Unit 2 (“Unit 2”), Big Bend Unit 3 (“Unit 3”), and Big Bend Unit 4 (“Unit 4”).

11. Defendant, TECO, owns and is an operator of Gannon a coal fired electric generation plant in Hillsborough County. Gannon generates electricity from six steam generating boilers which are designated as Gannon Unit 1 (“Unit 1”), Gannon Unit 2 (“Unit 2”), Gannon Unit 3 (“Unit 3”), Gannon Unit 4 (“Unit 4”), Gannon Unit 5 (“Unit 5”), and Gannon Unit 6 (“Unit 6”).

12. The Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

### STATUTORY BACKGROUND

13. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

#### The National Ambient Air Quality Standards

14. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for those air pollutants ("criteria pollutants") for which air quality criteria have been issued pursuant to Section 108, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

15. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

16. At times relevant to this complaint, Big Bend and Gannon were located in an area that had been classified as attainment or unclassifiable for NO<sub>x</sub>, SO<sub>2</sub>, PM-10, and PM.

### The Prevention of Significant Deterioration Requirements

17. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

18. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility install and operate the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units ("BTUs") per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

19. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant

emitted by such source or which results in the emission of any air pollutant not previously emitted.”

#### ENFORCEMENT PROVISIONS

20. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . .”

21. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

22. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.



23. At all times pertinent to this civil action, Defendant was and is the owner and operator of Big Bend and each of its four boilers, designated Units 1, 2, 3, and 4.

24. At all times pertinent to this civil action, Defendant was and is the owner and operator of Gannon and each of its six boilers, designated Units 1, 2, 3, 4, 5, and 6.

25. At all times pertinent to this civil action, Big Bend and Gannon were each a “major emitting facility” and a “major stationary source” within the meaning of the Act for NO<sub>x</sub>, SO<sub>2</sub>, PM-10, and PM.

**FIRST CLAIM FOR RELIEF**  
( PSD Violations: Modifications at Big Bend)

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. At various times, Defendant commenced construction of modifications, as defined in the Act, at Big Bend. These modifications included, but are not limited to: (1) replacement of steam drum internals in Units 1 and 2 in 1994 and 1991, respectively; (2) replacement of the waterwall in Unit 2 in 1994; and (3) replacement of the high temperature reheater in Unit 2 in 1994. Defendant constructed additional modifications to its plant beyond those described in this paragraph.

28. Defendant violated and continues to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such modifications and continuing to operate its facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

29. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

30. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

**SECOND CLAIM FOR RELIEF**  
( PSD Violations: Modifications at Gannon)

31. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

32. At various times, Defendant commenced construction of modifications, as defined in the Act, at Gannon. These modifications included, but are not limited to: (1) replacement of the furnace floor in Unit 3 with a new design in 1996; and, (2) replacement of the cyclone in Unit 4 in 1994. Defendant constructed additional modifications to its plant beyond those described in this paragraph.

33. Defendant violated and continues to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such modifications and continuing to operate its facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO<sub>x</sub>, SO<sub>2</sub>, and PM, as required.

34. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

35. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997,

and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 35 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating Units 1 through 4 of Big Bend and Units 1 through 6 at Gannon, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendant to remedy its past violations by, among other things, requiring Defendant to install, as appropriate, the best available control technology on Units 1 through 4 at Big Bend and Units 1 through 6 at Gannon for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendant to apply for permits for the Big Bend and Gannon facilities that are in conformity with the requirements of the PSD program;

4. Order Defendant to conduct audits of its operations to determine if any additional modifications have occurred which would require it to meet the requirements of PSD and report the results of these audits to the United States;

5. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above.

6. Assess a civil penalty against the Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;
7. Award Plaintiff its costs of this action; and
8. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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